



Office of the People's Counsel District of Columbia

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Elizabeth A. Noël
People's Counsel

May 7, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Suite 222
Washington, D.C. 20554

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MAY 27 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

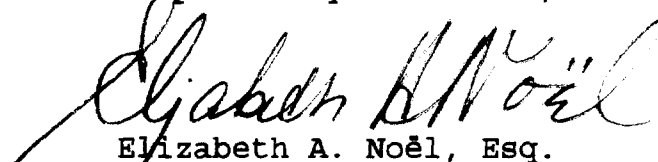
Re: CC Docket No. 96-45

Dear Mr. Caton:

Enclosed for filing please find an original and four (4) copies of the "Reply Comments of the Office of the People's Counsel For the District of Columbia" in the above referenced proceeding.

Any questions regarding this matter may be directed to the undersigned.

Respectfully submitted,


Elizabeth A. Noël, Esq.
People's Counsel

Enclosure

cc: All parties of record

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED

(MAY 27 1996)

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

IN THE MATTER OF

**Federal-State Joint Board on
Universal Service**

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CC Docket No. 96-45

**REPLY COMMENTS OF THE OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA**

The Office of the People's Counsel for the District of Columbia (OPC-DC) hereby submits its Reply Comments in the above captioned proceeding pursuant to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking (Notice) released March 8, 1996. On April 12, 1996, OPC-DC, as the statutory representative of utility ratepayers in the District of Columbia, filed extensive comments in this proceeding which focused on the areas that most directly impact District of Columbia ratepayers. In the following reply comments, OPC-DC does not re-examine the issues discussed in its initial comments but rather responds to positions raised by commentors. Specifically, OPC-DC responds to commentors addressing the elimination of the interstate CCL charge, the prohibition of disconnection for non-payment of toll charges, and affordability issues.

I. Commentors Overwhelmingly Indicate that the Commission Should Not Eliminate or Reduce the Subscriber Loop Portion of the Interstate CCL Charge

In OPC-DC's original comments, the Office urged the Commission to reject any proposal that would eliminate or reduce the subscriber loop portion of the interstate CCL charge. OPC-DC continues to support this position and fully concurs with the position advanced by the

American Association of Retired Persons, Consumer Federation of America, and Consumers Union in their joint comments. Specifically, OPC-DC agrees that “if the CCL charge is transformed into either an increase in the SLC or into a draw on the universal service fund, the IXC will be the recipient of a subsidy from those paying for the loop.”¹ Such “free access” as depicted by the above joint commentors, constitutes a violation of Section 254(k) of the Telecommunications Act of 1996 (1996 Act) in that IXC’s would be allowed to use a joint and common facility without having to bear a reasonable share of the joint and common costs.

Section 254(b) states:

The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

As the joint commenters make clear, if free access is granted to the IXCs, universal service rates will end up covering all of the costs of the local facilities that are used by long-distance providers. Clearly, this result was not intended by Congress and should, therefore, be avoided by rejecting any proposal to eliminate the CCL charge.

Furthermore, OPC-DC agrees with Bell Atlantic that retaining the interstate CCL charge does not violate the statutory ban on implicit subsidies.² Section 254 of the 1996 Act requires that all universal service support flows be explicit and recovered on a nondiscriminatory basis from all carriers providing interstate telecommunications service. As Bell Atlantic notes in its

¹ Initial Comments of the American Association of Retired Persons, Consumer Federation of America, and Consumers Union, filed April 12, 1996 at 16.

² Comments of Bell Atlantic, filed April 12, 1996 at 10, 11.

comments, however, interstate CCL charges are not implicit subsidies. Interexchange carriers use the local exchange carriers' loop plant to provide service to their customers and should therefore pay a portion of the non-traffic sensitive loop cost. The mere fact that the interstate costs allocated to a particular line may not always match the relative interstate/intrastate use of the facility, does not provide a sufficient basis to support the propositional assertion that the CCL charge is a subsidy. Accordingly, OPC-DC agrees with Bell Atlantic that the existing CCL charge does not violate Section 254 of the 1996 Act.

OPC-DC recognizes the Commission's concern regarding the recovery of non-traffic sensitive costs on a traffic sensitive basis. Nonetheless, OPC-DC does not support the Commission's proposal to increase the subscriber line charge as a means of avoiding the recovery of non-traffic sensitive costs on a traffic sensitive basis. Rather, OPC-DC supports the proposal submitted by the Maine Public Utility Commission and the other parties that jointly submitted comments in that filing, (hereinafter Maine Public Utility Commission, et. al.) which address this concern and suggest a reasonable approach that will prevent recovery of these costs from end-users.³ The Maine Public Utility Commission, et. al. comments that what is important, from an economically efficient perspective, is that rates are structured on a flat rated basis. The recovery of non-traffic sensitive costs, and who should pay them, is not only an economic efficiency issue, but also and importantly, an equity issue. In resolving the apparent conflict between efficiency

³ Comments of the State of Maine Public Utilities Commission, the State of Montana Public Service Commission, the State of Nebraska Public Service Commission, the State of New Hampshire Public Utilities Commission, the State of New Mexico State Corporation Commission, the State of Utah Public Service Commission, the State of Vermont Department of Public Service and Public Service Board, and the Public Service Commission of West Virginia, filed April 12, 1996 at 16-18.

and equity, the Maine Public Utility Commission, et. al. developed a four-step approach to recovering non-traffic sensitive costs which OPC-DC believes is the type of approach the Commission should adopt. The four-step approach in the comments of the Maine Public Utility Commission, et.al. is as follows:

1. All interstate non-traffic sensitive costs would be identified and reduced to a per line charge or rate.
2. That charge or rate would then be assessed to the interexchange carrier to which the end user has presubscribed.
3. If casual use of other carriers' services is made by the end user, a per line charge would be divided among all carriers using the common line on the basis of relative usage by each carrier.
4. Interexchange carriers would be free to recover the flat charge made to them in any way the market will allow. . . so long as the charges are made to the end user by the interexchange carrier and not the local exchange carrier.⁴

The advantages of using this type of mechanism are numerous. Of greatest significance, however, is the fact that the subscriber line charge will not increase. As noted by several commentors, even a modest increase to the subscriber line charge may force many subscribers off the telephone network. The Commission itself noted that "[r]ecovery of the full interstate allocation of common line costs directly from end-users might cause the flat monthly rates paid by certain subscribers to exceed acceptable levels and could have an adverse impact on telephone subscribership."⁵ In fact, as noted by the New York Department of Public Service and other commentors, an increase in the subscriber line charge would be counter to the first universal

⁴ Id. at 17.

⁵ See Notice at para. 113.

service principle in the 1996 Act that quality services be available at “just, reasonable and affordable rates.”⁶ Finally, the above mechanism will increase consumer awareness by making clear that the non-optional flat rate consumers pay each month is for the right to place and receive long-distance calls.

II. Bell Atlantic is Incorrect to Assume that a Prohibition on Disconnect for Non-Payment of Toll Charges Has No Impact on Subscribership

Bell Atlantic incorrectly asserts in its comments that “prohibiting denial of local service for non-payment of toll bills, when implemented at the state level, ha[s] not had an appreciable impact on subscribership.”⁷ To the contrary, empirical evidence supports the opposite conclusion. As the comments submitted by the Public Utility Law Project of New York, Inc. (PULP) indicate, prohibiting disconnect for non-payment of toll charges has had a significant effect on subscribership in New York. PULP’s comments report that as a direct result of New York’s billing and collection reforms, the state has experienced a significant growth in access lines due to customers’ ability to maintain core access services despite payment problems with their long distance carriers.⁸ Even Bell Atlantic has reported that disconnect for non-payment of long-distance service is a primary reason why customers do not have telephone service.⁹

⁶ Section 254(b)(1).

⁷ Bell Atlantic Comments at 14.

⁸ Comments of the Public Utility Law Project of New York, Inc., filed April 12, 1996 at 4.

⁹ See, OPC-DC’s Comments, filed April 12, 1996 at 3 citing The Chesapeake and Potomac Telephone Company’s Submission of Telephone Penetration Studies, submitted in DCPSC Formal Case No. 850, at p.2 (October 1, 1993).

OPC-DC, therefore, urges the Commission and the Joint Board to create a national policy prohibiting the disconnection of local service for failure to pay long-distance bills as a means of advancing the universal service goals expressed by Congress in the 1996 Act. The evidence clearly demonstrates that state-implemented prohibitions on disconnect for non-payment improve subscribership. Moreover, OPC-DC concurs with PULP's position that the 1996 Act actually requires the Commission to take action to remove all barriers to universal service caused by termination of local service for failure to pay long-distance charges. As PULP indicates in its comments, Section 253(c) of the 1996 Act provides express authority for the FCC to preempt any state rule or practice that works as a barrier to the provision of any telecommunications services. In addition, Section 253(a) of the 1996 Act prohibits any state from inhibiting the provision of telecommunications services. Therefore, as PULP notes, "[s]tate rules allowing basic network access to be held hostage for payment of other services, without offering the customer the opportunity to keep basic service if she pays for it, have the effect of prohibiting other entities from providing their services, and are thus in violation of the plain language of Section 253(a)."¹⁰ Under Section 253(c), therefore, the Commission is required to take action that would preempt local jurisdictions from continuing to support a policy of disconnect for non-payment of toll charges, which is clearly a barrier to the provision of telecommunications services.

III. Measures of Affordability

In OPC-DC's initial comments, the Office proposed a definition of "affordable" rates based on a consumer perspective. OPC-DC noted that Congress' intent in adding the word "affordable" to the existing "just and reasonable" standard for determining rates was to ensure

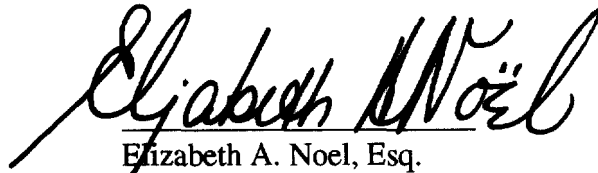
¹⁰ PULP Comments at 5.

that rates in a competitive market do not impose a financial hardship or a serious inconvenience on consumers. OPC-DC agrees with PULP's comments that the most meaningful measure of affordability should also be based on a consumer perspective.¹¹ While overall penetration levels do provide an objective measure of whether rates are just and reasonable, it should not be the sole determinant. Penetration statistics alone do not indicate whether rates for individual services are affordable to the extent that they do not impose financial hardship or serious inconvenience to consumers. In addition to penetration levels, the Commission should adopt a policy on affordability that examines the number of terminations for nonpayment. In addition, affordability measurements should include those consumers already receiving need-based benefits. In that way, affordable rates will reflect an understanding that in some instances, basic telephone rates become an economic hardship for consumers on restricted incomes. As PULP indicated, this type of data provides a more direct means of measuring when consumers no longer can afford service.

¹¹ *Id.* at 7.

WHEREFORE, OPC-DC respectfully requests that the Commission favorably consider the above recommendations in adopting policy to implement the universal service mandates of the 1996 Act.

Respectfully Submitted

A handwritten signature in black ink, reading "Elizabeth A. Noel". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Noel" clearly legible.

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